

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3850 of 2018

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner–plaintiff assailing the order, dated 18.04.2018, of the learned Senior Civil Judge, Markapur, Prakasam District, passed in CFR.No.1669 of 2018 in OS.no.61 of 2012 filed by the petitioner – plaintiff for recalling the docket order, dated 16.03.2018, passed in IA.No.1636 of 2017.

2. I have heard the submissions of *Sri B. S. Reddy*, learned counsel appearing for the revision petitioner–plaintiff. Track report of the postal website showing service of notice on the 3rd respondent and also track report of postal website showing service of notice on the counsel appearing for the respondents in the proceedings before the trial Court is filed. None of the respondents entered appearance.

3. I have perused the material record.

4. From the pleadings and submissions, the following facts are noticeable.

Plaintiff filed the suit for partition. Some of the contesting defendants filed written statement and are resisting the suit. During the course of trial, plaintiff filed IA.No.1636 of 2017 for recalling PW1 for cross-examination. The said petition was allowed, on 05.03.2018, subject to payment of costs of Rs.500/- and the matter was posted for examination of DW1, who is recalled for the purpose of cross examination. For non payment of the said costs despite the presence of DW1 in Court, the petition was dismissed, on

16.03.2018. Aggrieved thereof, the subject CFR is filed, under Section 151 of the Code, for recalling the said orders of dismissal, dated 16.03.2018, *inter alia*, stating in the supporting affidavit of the counsel that on that day he was ready to cross-examine DW1, but, before the matter is taken up during the after lunch session, he received information that his mother, who was a cancer patient, was in serious condition; that, therefore, he gave Rs.500/- to his clerk and directed to pay the costs and take time for cross examination to the next day; that the clerk, who was in the Court hall, received a phone call from another party in connection with another case and hence, came out; that, therefore, by the time the matter was called, there was no representation for the plaintiff and costs also could not be paid; and, consequently, the petition came to be dismissed for default.

5. Learned counsel for the petitioner/plaintiff reiterated the submissions made in the afore-said affidavit and stated that though there are number of defendants in the suit, in the order of the Court directing to pay costs, there was no specific direction as to which one of the defendants the costs are to be paid and that moreover there are justifiable circumstances which are explained in the affidavit for the inability of the plaintiff to pay the costs and that, therefore, the trial Court ought to have granted one more opportunity to the plaintiff to cross examine DW1 by recalling the order, dated 16.03.2018, passed in IA.No.1636 of 2017.

6. I have given earnest consideration to the facts and submissions. As rights with regard to valuable immovable property are involved in the *lis* and as it appears that the order dismissing the earlier application has come to be

passed for the absence of the counsel, for the reasons that are explained in his affidavit, and as this Court is of the view that the plaintiff cannot be blamed and penalized for the inability of the counsel to appear before the Court on the day the matter was listed for payment of costs of Rs.500/- and cross-examination of DW1, this Court finds that the case on hand is a fit case to grant the relief to the plaintiff by allowing the revision, however, subject to terms. Such a course sub-serves the ends of justice. For the above reasons this Court holds that the order impugned warrants interference.

7. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. As a sequel, CFR.no.1669 of 2018 is allowed; and, accordingly, the dismissal order, dated 16.3.2018 passed in IA.No.1636 of 2017 is recalled subject to payment of costs of Rs.1,000/- to DW1; and, consequently the plaintiff is accorded permission to cross examine DW1. As a result, the trial Court shall now fix a date for appearance of DW1, preferably within a week from the date of receipt of a copy of this order, however, as per its convenience and the convenience of the counsel appearing for the parties in the suit. On the date that may be fixed by the trial Court, the plaintiff shall pay the costs of Rs.1,000/- mentioned above to DW1 directly before the trial Court takes up the matter for recording the cross-examination of the said witness.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

18.09.2018

Note:- Issue cc by 19.09.2018
(B/o) Vjl